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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/507,125	12/21/2004	Jean-Marie Samec	121033	8896
25944	7590	06/15/2007		
OLIFF & BERRIDGE, PLC P.O. BOX 19928 ALEXANDRIA, VA 22320			EXAMINER PRATT, HELEN F	
			ART UNIT 1761	PAPER NUMBER
			MAIL DATE 06/15/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/507,125	SAMEC ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Helen F. Pratt	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 22-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 29 recites the broad recitation "the mineral salts are chosen from", and the claim also recites "in particular the chlorides" which is the narrower statement of the range/limitation.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 22- 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones (The soybean cookbook), p.121, Mayonnaise I, Schapiro (3,988,511), Singer et al., Duthie (4,259,358) and Cook (US 2003/0203042 A1).

Jones discloses a recipe for soy mayonnaise that contains soymilk powder, oil and water and seasonings (page 121). Carbohydrates are also found in soy milk powder. Claim 22 differs from the reference in the use of a composition, which contains 75% proteins. However, Jones discloses that soy albumen is a known food product, which contains 96.6 % protein (page 28, under "other soy product".) The soymilk of Jones contains about as much protein as regular milk. Schapiro discloses

that it is known to instantize various proteins with lecithin and sugar, in order to make them water dispersible (abstract and col. 5, lines 12-20). Also, Singer et al. disclose that it is known to use denatured egg white protein /casein particles in sauces, dips and spreads (abstract and col. 19, lines 10-60). Duthie discloses a composition containing various amounts of protein depending on whether the fat or carbohydrate are removed from the product. The composition contains protein enhanced and protein depleted fractions (abstract). The amounts of lipid can be varied to make a product high in protein (col. 13, lines 53-59, col. 14, lines 20-26, col. 17, lines 35-49). Claim 22 differs further requires that the composition is in the form of a cream and neutral in flavor. However, as the only ingredient claimed has been shown, it would have been obvious to add a little water to make a cream.

Cook discloses a composition using milk protein derived from milk protein concentrate and a fatty acid material free of added lactose (page 10, claim 1). As the composition is called milk protein, it is seen that it contains at least 75% protein lipid and carbohydrate (lactose).

Therefore it would have been obvious to make a base containing the claimed amount of protein as shown by the combined references.

Claim 23 and 24 further require heat-resistant proteins which can be casein or albumin or globulin. Cook discloses the use of milk protein, which is known to contain all three ingredients, particularly casein. Also, Jones et al. as above disclose that it is known to use albumin in products. Therefore, it would have been obvious to use

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known milk ingredients to make the claimed composition as shown by Jones and Jones in view of Cook.

Claim 25 further requires rapidly absorbed carbohydrates and slowly absorbed carbohydrates. Duthie discloses the use of digestable and indigestible carbohydrates depending on the degree of enzymatic hydrolysis employed (col. 14, lines 1-20). Also, the use of the claimed types of carbohydrates are well known as is their function. Therefore, it would have been obvious to use known ingredients, which are easily digested or not easily digested.

Claims 26 - 29 further require vitamins and minerals. Duthie discloses the use of vitamins and minerals (col. 11, lines 14-21) as does Cook (0084 -0096). Therefore, it would have been obvious to use known vitamins in the composition as shown by Duthie and Cook.

Claim 30 further requires lactose in trace amounts and cholesterol in trace amounts. However, soybeans do not contain cholesterol since they are a vegetable material, nor do soybeans contain lactose. Also, Cook discloses that it is known to use a composition substantially free of lactose (0028) and free of fatty acid material (lipids) (0027). Therefore, it would have been obvious to make products, which do not contain lactose.

Emulsifiers and or stabilizers and thickeners are disclosed by Cook as in claim 31 (0053). Schapiro discloses the use of lecithin as a surfactant (abstract). Singer also discloses the use of lecithin and xanthan gum (thickener) (col. 10, lines 8-15).

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Therefore, it would have been obvious to make a composition as shown by the combined references using emulsifiers, stabilizers or thickeners.

The limitations of claim 32 have been shown above except for the particular amount of mineral salts. However, it would have been within the skill of the ordinary worker to use particular amounts of RDI's absent anything new using 10%. Therefore, it would have been obvious to use particular amounts for their known function.

Claim 33 further requires the use of polyphosphates or alginate. However, as above the use of xanthan gum is known, it would have been obvious to use other gums or thickeners in the claimed composition for their known function. Therefore, it would have been obvious to use known ingredients for their known functions.

Claims 34 to 36 further require mixing foods with the culinary base. The soy mayonnaise of Jones et al. can be used with such foods. Claims 34 – 36 are also product by process claims. The fact that the procedures of the reference are different than that of applicant is not a sufficient reason for allowing the product-by-process claims since the patentability of such claims is based upon the product formed and not the method by which it was produced. See *In re Thorpe* 227 USPQ 964. The burden is upon applicant to submit objective evidence to support their position as to the product-by-process claims. See *Ex parte Jungfer* 18 USPQ 2D 1796. Therefore, it would have been obvious to make a product containing the claimed sauce and other foods.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hp 6-11-07

  
HELEN PRATT  
PRIMARY EXAMINER